IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWELFTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE Mr. JUSTICE B. SUDERSHAN REDDY

And

THE HON'BLE Mr. JUSTICE C.V. RAMULU

WRIT PETITION No.7965 of 2005

Between:

Kurupam Market Tenants Welfare Association,

a Registered Society, Rep. by its Secretary,
Sri Paluri Gangadhara Prasad, S/o. Late Narasinga Rao,
aged 49 years, Hindu, Vysya, Business,

D.No.25-8-228/7(56), Kurupam Market, Visakhapatnam.

..... PETITIONER

AND

1. The Visakhapatnam Municipal Corp.,

Rep. by its Commissioner, Visakhapatnam.

2. The E.P.E.O., Kurupam Market,

D.No.25-8-226 to 228, Main Road,
Visakhapatnam being endowment property,

Rep. by the Commissioner,
Endowments Departments, Boggulakunta,

Tilak Road, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue any Writ, order or direction more particularly one in the nature of writ of Mandamus declaring the action of the 1st respondent in attempting to seize and lock our shops and houses in Kurupam Market bearing D.Nos.25-8-226 to 228, Main Road, Visakhapatnam from 06-04-2005 for non payment of the property tax to the said market premises by the
2nd respondent and the 2nd respondent not paying the property tax from 1993 till date in spite of oral and written representations, dated 24.03.2005 as illegal, arbitrary, capricious, unjust and violative of Article 19 (1) (g) and
Article 21 of the Constitution of India and consequently to direct the 1st respondent not to seize and lock the said market premises and direct the 2nd respondent to take steps for payment of the entire property tax due by it to the
1st respondent to avoid any further harassment and hardship to the members of the petitioner society from the
1st respondent.

Counsel for the Petitioner: Smt. N.(P). Anjana Devi,
Sri P. Satyanarayana, Advs.

Counsel for Respondent No.1: Sri N. Ranga Reddy,
S.C. for Municipal Corporation.

Counsel for Respondent No.2: G.P. for Endowments

The Court made the following:-

ORDER: (Per Hon'ble Sri Justice B. Sudershan Reddy)

The petitioner-Kurupam Market Tenants Welfare Association is a registered society consisting of members whose details are furnished in the annexure appended to this writ petition. The members of the petitioner-Society are the tenants of the 2nd respondent and running small businesses in Kurupam Market at Visakhapatnam.

It is stated that the 2nd respondent who is primarily responsible to pay the property tax did not pay the tax payable by it to the 1st respondent – Visakhapatnam Municipal Corporation (for short 'the Corporation'). It is also

stated that the Corporation without issuing any notice whatsoever, started pressurizing the members of the Society for payment of tax on the pain of threats to seize the market premises and put locks to the market area in the occupation and enjoyment of the members of the Society.

It is under those circumstances, the Society invokes the jurisdiction of this Court under Article 226 of the Constitution of India seeking to declare the action of the Corporation in attempting to seize and lock the shops and houses in the Kurupam Market area for non-payment of property tax as illegal and arbitrary. That under the provisions of the Hyderabad Municipal Corporation Act, 1955 (for short 'the HMC Act') which is applicable to the situation on hand, no doubt the primary responsibility to pay the property tax is that of the owner of the premises but the actual occupier of the premises cannot altogether escape from their liability to pay the property tax and in what situation and circumstances, the property tax can be realized and collected from the persons in occupation is provided for under the provisions of the HMC Act.

In such view of the matter, the Corporation altogether cannot be prevented from proceeding against the members of the Society for realization of the property tax payable by the 2nd respondent, who is stated to be the owner of the premises of Kurupam Market area. But the Corporation without putting the members of the Society on notice cannot forcibly seize or lock the shops and houses in the market area and take coercive steps for realization of the property tax payable in respect of each of the premises located in the said market area.

Interest of justice would be met by disposing of this writ petition directing the Corporation to put each of the tenants/members of the Society on prior notice, in case, if it intends to proceed against them for realization of the property tax under the provisions of the HMC Act and not to take coercive steps without putting the members of the Society on such prior notice as is required under law.

Accordingly, the Writ Petition is disposed of without any order as to costs.

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B. SUDERSHAN REDDY, J

Date:12-04-2005.

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C.V. RAMULU, J

PV

To

1. The Visakhapatnam Municipal Corp.,

Rep. by its Commissioner, Visakhapatnam.

2. Two C.D. copies.